REMARKS

This is intended as a full and complete response to the Final Office Action dated October 16, 2008, having a shortened statutory period for response set to expire on January 16, 2009. Applicants submit this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1, 2, 4-13 and 30-38 are pending in the application. Claims 1, 2, 4-13 and 30-38 remain pending following entry of this response.

Claim Rejections - 35 U.S.C. § 103

Claims 1-2, 4-6, 8, 9, 30, 32, 36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Dynamic Virtual Clusters in a Grid Site Manager", *Sara E. Sprenkle et al.*, Publication date, June 22-24, 2003 (hereafter *Sprenkle*) in view of *Camble et al.*, U.S. Publication No. 2003/0135580 (hereinafter *Camble*) further in view of "Virtualizing I/O Devices on *VMware* Workstation's Hosted Virtual Machine Monitor", published as part of the Proceedings of the 2001 USENIX Annual Technical Conference (hereafter *VMware*).

Claims 7, 10, 11-13, 31, 33-35, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Sprenkle* in view of *Camble* further in view of *VMware* further in view of *Lumelsky et al.*, U.S. Patent No. 6,460,082 (hereinafter *Lumelsky*).

Applicants respectfully traverse this rejection.

The Examiner bears the initial burden of establishing a prima facie case of obviousness. See MPEP § 2141. Establishing a prima facie case of obviousness begins with first resolving the factual inquiries of Graham v. John Deere Co. 383 U.S. 1 (1966). The factual inquiries are as follows:

(A) determining the scope and content of the prior art;

(B) ascertaining the differences between the claimed invention and the prior art;

(C) resolving the level of ordinary skill in the art; and

(D) considering any objective indicia of nonobviousness.

Once the Graham factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.

Respectfully, Applicants submit that the Examiner has not properly characterized the teachings of the references and/or the claims at issue. Accordingly, a prima facie case of obviousness has not been established.

Applicants respectfully submit that *Sprenkle* is not analogous art, and therefore, is not relevant prior art. The similarities and differences in structure and function between the invention and the prior art carry great weight in determining whether the prior art is analogous. See MPEP § 2141.01 (a) II. In this case the structure and functions of items disclosed in *Sprenkle* have nothing to do with logical partitions on a single computer. As Applicants pointed out in the Response to Office Action filed on June 23rd, 2008, *Sprenkle* is directed to a clustered system comprising a plurality of servers (or computers). *See* Abstract of *Sprenkle*. Specifically, *Sprenkle* describes a cluster manager called Cluster On-Demand (COD) that allocates servers from a common pool to multiple virtual clusters, or vclusters. *See Id.* The Examiner analogizes the first logical partition with the vclusters of *Sprenkle*. However, virtual clusters comprising a plurality of servers are not the same as logical partitions of a single computer. In other words, the structure of the items disclosed in *Sprenkle* is completely unrelated to the structure of the claimed invention. Accordingly, Applicants submit that *Sprenkle* is non-analogous art.

Relatedly, the reference teaches away from logical partitions of a single computer. The clustered system of *Sprenkle* necessarily assumes/requires a plurality of servers (or computers). The fundamental objective of *Sprenkle* of allocating server computers from a common pool to multiple virtual clusters, or vclusters, is simply impossible with a single computer.

Moreover, even if assumed, *arguendo*, that *Sprenkle* is analogous art, Applicants submit that *Sprenkle* cannot be reasonably combined with *VMware*. In rejecting claims 1, 10, 30, and 36, Examiner suggests that *Sprenkle* can be combined with *VMware* because both references relate to "virtualization". See page 4 of the Final Office Action dated October 16th, 2008. However, Applicants respectfully submit that the

"virtualization" described in *Sprenkle* is completely different from the "virtualization" described in *VMware*. Specifically, *VMware* is related to virtualization of I/O devices on a physical machine. For example, Figure 3 and section 2.2, which are referenced by the Examiner describe how a single physical network interface card (NIC) can support multiple virtual NICs, each having a unique MAC address and being capable of accessing and providing network services. However, virtualization of a physical device, as described in *VMware* is not the same as allocating servers from a common pool to multiple virtual clusters. Examiner provides no guidance as to how the virtual replication of physical devices as described in *VMware* can be combined with the creation of virtual clusters as described in *Sprenkle*. In fact, Applicants submit that such a combination is not possible because the structure and functions of items described in *Sprenkle* are nothing like the structure and functions of the items described in *VMware*. Therefore, Applicants submit that *Sprenkle* and *VMware* are not analogous art. Accordingly, they cannot be reasonably combined.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

Conclusion

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

If the Examiner believes any issues remain that prevent this application from going to issue, the Examiner is strongly encouraged to contact Gero McClellan, attorney of record, at (336) 698-4286, to discuss strategies for moving prosecution forward toward allowance.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

/Gero G. McClellan, Reg. No. 44,227/

Gero G. McClellan
Registration No. 44,227
PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicants